



12 JUL 2007

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In re Application of :
ANDREEV et al. :
Application No.: 10/510,992 :
PCT No.: PCT/US03/11193 :
Int. Filing Date: 11 April 2003 :
Priority Date: 12 April 2002 :
Attorney Docket No.: NU-597XX :
For: MATCHED FILTRATION WITH :
EXPERIMENTAL NOISE :
DETERMINATION FOR DENOISING, :
PEAK PICKING AND QUANTITATION :
IN LC-MS :

DECISION ON REQUEST
&
NOTIFICATION OF
ABANDONMENT

This decision is issued in response to applicants' "Petition to Correct Filing Date" filed 12 April 2007. Additionally, this application is before the Office Of PCT Legal Administration for issues arising under 35 U.S.C. 371. No petition fee is required.

BACKGROUND

On 11 April 2003, applicants filed international application PCT/US03/11193. The application claimed a priority date of 12 April 2002 and designated the United States. Subsequent to the filing of the international application, pursuant to PCT Rule 26ter, applicants filed therein a declaration of inventorship under PCT Rule 4.17(iv). This declaration was executed by each of the three inventors; however, the declaration did not specifically identify the international application to which it was directed, that is, PCT/US03/11193.

On 23 October 2003, a copy of the international application was communicated to the United States Patent and Trademark Office ("USPTO") by the International Bureau ("IB"). The deadline for submission of the basic national fee was thirty months from the priority date, i.e., 12 October 2004.

On 12 October 2004, applicants filed a transmittal letter for entry into the national stage in the United States accompanied by, among other materials, payment of the basic national fee; a copy of the international application; and a copy of the declaration of inventorship under PCT Rule 4.17(iv) previously submitted.¹

On 24 June 2005, the United States Designated/Elected Office (DO/EO/US) mailed a "Notification Of Missing Requirements" (Form PCT/DO/EO/905) indicating that the declaration filed by applicants was defective for failure to properly identify the application to which it was directed. The Notification required submission of an oath or declaration acceptable under 37 CFR 1.497, as well as the surcharge for filing the oath or declaration later than thirty months after the priority date.

On 11 July 2005, applicants filed a response to the Notification Of Missing Requirements. The submission included was not, however, accompanied by a new oath or declaration. Instead, applicant submitted a copy of the previously filed declaration, which had been amended to include to PCT application number.

On 04 August 2005, the United States Designated/Elected Office (DO/EO/US) mailed a "NOTIFICATION OF ACCEPTANCE OF APPLICATION UNDER 35 U.S.C. 371 AND 37 CFR 1.494 OR 1.495" (Form PCT/DO/EO/903) which set forth a 35 U.S.C. 371 completion date of 11 July 2005.

On 12 April 2007, applicants filed a "Petition to Correct Filing Date."

DISCUSSION

Applicants request a corrected filing date (or 371(c) date) from 11 July 2005 to 12 October 2004. The actual filing date of the present application is the international filing date, i.e., 11 April 2003. (See 35 U.S.C. 363) The date in the filing date portion on the filing receipt of a national stage application is the date upon which the requirements set forth in 35 U.S.C. 371(c) for entry into the national stage were completed. (See MPEP §1895.01)

A review of the application file and other Patent and Trademark Office records reveals that the requirements of 35 U.S.C. 371(c) for entry into the national stage in the United States of America have not been completed as indicated in the Notification of Acceptance mailed by the DO/EO on 04 August 2005. Specifically, the declarations filed on 12 October 2004 is defective pursuant to 37 CFR 1.497(a)(2) and 37 CFR 1.63(b)(1), in that, the declaration does not identify the specification to which it is directed.

The instructions to the Rule 4.17(iv) declaration state: "[w]here the declaration was not included in the request, but is furnished later, the PCT application number MUST be indicated within the text of Box No. VIII (iv)." Consistent with this instruction, the text of

¹Pursuant to 37 CFR 1.10(a), all documents were given a submission date of 12 October 2004.

the Rule 4.17(iv) declaration includes a line that expressly requires entry of the PCT international application number "if furnishing the declaration pursuant to Rule 26ter."

Here, the executed Rule 4.17(iv) declaration was not filed with the original international application materials. Accordingly, the declaration was required to include the PCT application number for the application to which it was directed, that is, PCT/US03/11193. Because the declaration does not include this PCT application number, the declaration is defective for failure to properly identify the specification to which it was directed. Applicants argue that the failure to identify the application "constitutes a harmless error when the transmittal letter and declaration is sent to the PTO in the same Express Mail envelope." Applicants' assertion is incorrect, in that, the declaration fails to meet "the minimum requirements" as set forth in the Manual of Patent Examining Procedure (MPEP). See MPEP §602(VI) Page 600-35.

The 11 July 2005 communication (Letter) was not a proper reply to the Notification of Missing Requirements under 35 U.S.C. 371 (Form PCT/DO/EO/905) mailed 24 June 2005. The declaration filed 11 July 2005 is not in compliance with 37 CFR 1.497(a)-(b), in that, alterations were made to the declaration after it was executed. Specifically, the declaration submitted with the response included information (PCT international application number) that was not contained on the declaration filed 12 October 2004 and these alterations have been made after the declaration had been executed by the joint-inventors. (See 37 CFR 1.52(c) and Manual of Patent Examining Procedure § 605.04(a).)

Based on the above, applicants have failed to file an oath/declaration required in the Notification Of Missing Requirements mailed 24 June 2005. Because the failure to file the proper response does not appear to have been the result of an inadvertent omission (37 CFR 1.135(a)), applicants will not be accorded a new time period to correct the deficiencies in the response. Accordingly, the application is hereby held to be **abandoned**.

CONCLUSION

The present application is **ABANDONED** for failure to file a timely and complete response to the Notification Of Missing Requirements mailed 24 June 2005.

Applicants may wish to consider filing a petition to the Commissioner under 37 CFR 1.137(a) or (b) requesting that the application be revived. This recommendation to file a petition under 37 CFR 1.137(a) or (b) should not be construed as an indication as to whether or not any such petition(s) will be favorably considered.

Any further correspondence with respect to this matter deposited with the United States Postal Service should be addressed to the Mail Stop PCT, Commissioner for Patents, Office of PCT Legal Administration, P.O. Box 1450, Alexandria, Virginia 22313-1450, with the contents of the letter marked to the attention of the Office of PCT Legal Administration.

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The application is being referred to the National Stage Processing Branch of the Office of PCT Operations for further processing in accordance with this Communication, including the mailing of a Notification Of Abandonment (Form PCT/DO/EO/909).



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